

BETWEEN

ABD Ltd

APPLICANT

AND

ZZA Ltd

RESPONDENT

Date of Order:

22 May 2013

Referee:

Referee Stewart

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ABD Ltd is not liable to pay ZZA the sum of \$175.00.

Facts

[1] ZZA Ltd had provided accounting services for two companies, PH Ltd and ABD Ltd, and the JO Trust – all of which ML had involvement with. In November 2011, ML emailed ZZA Ltd and asked whether it would be prepared to charge less for doing the accounts for these entities than previously billed.

[2] ZZA Ltd replied:

Last year you were charged \$4500.00 for the three accounts which is the time spent processing them. We are happy to hold that cost and you will only be charged a maximum of \$4500.00.

[3] ML rang and spoke with DA, director of ZZA Ltd, on receipt of the three invoices all sent on 19 March 2012, in that the total sum of the three invoices came to \$4,500.00 plus GST. DA responded that the email was clear that it was to do with holding the costs the same as the year before, which had been \$4,500.00 plus GST.

[4] ML delayed payment as he disagreed with DA's understanding. Demand letters were sent. Payments of \$500.00 was made on 1 June 2012; \$1,610.00 on 20 June 2012, and \$2,890.00 on 20 September 2013 – a total of \$5,000.00. ZZA Ltd apportioned these sums in the first instance against the invoice for PH Ltd, then JO Trust and then ABD Ltd. This left a balance due on the ABD Ltd invoice of \$175.00.

[5] ML is claiming non-liability of \$175.00 and a refund of the GST portion paid of \$500.00.

Issues

[4] The issues are as follows:

- (i) Whether it was known to both parties at the time of entering the contract that the \$4,500.00 quote for ZZA Ltd's services for the three entities was exclusive of GST; and
- (ii) In paying sums of money without apportioning those sums to specific invoices and in ZZA Ltd apportioning those sums as invoiced to the respective invoices, has there been accord and satisfaction reached between the parties in respect of the invoices for PH Ltd and the JO Trust?

Decision

Was it known to both parties at the time of entering the contract that the \$4,500.00 quote for ZZA Ltd's services for the three entities was exclusive of GST?

[5] The law regarding GST is that if a sum is given and it is not stated that that sum is exclusive of GST or plus GST then that sum is deemed to be GST inclusive.

[6] I am aware that business to business (e.g. timber merchant to timber merchant) may give prices to the other and not state the prices as GST exclusive, and then add on GST when invoicing. In these situations, there is no dispute as both businesses have the same understanding, albeit that when GST is not spoken of it is deemed to be exclusive of GST. However, it is a risk taken by the merchant should the other merchant not share this understanding.

[7] ML claims that the maximum price owed on the three invoices was \$4,500.00, which is what he personally actioned in respect of these accounts. He was unaware that his wife had paid a \$500.00 sum also. It is DA's position that this was business to business; that the email was clear, and that it was to do with holding the costs the same as the year before, which had been \$4,500.00 plus GST.

[8] However, it can be seen there is ambiguity in the email as it is written: "Last year you were charged \$4,500.00 for the three accounts which is the time spent processing them. We

are happy to hold that cost...”, and within the same sentence: “you will only be charged a maximum of \$4,500.00”. This latter part of the sentence can be read as absolute.

[9] The legal principle of *contra preferentum* applies when there is a perceived ambiguity in wording: the reading of the wording is in favour of the non-writer. Therefore, in applying this principle, I find ZZA Ltd quoted ML a maximum price of \$4,500.00 being GST inclusive as it is not stated as being GST exclusive or plus GST.

In paying sums of money without apportioning those sums to specific invoices, and in ZZA Ltd apportioning those sums as invoiced to the respective invoices, has there been accord and satisfaction reached between the parties in respect of those invoices for PH Ltd and the JO Trust?

[10] As ML gave no instruction as to how the sums of money were to be apportioned and contrary to that invoiced, I find ZZA Ltd properly apportioned the sums against the invoices for PH Ltd and the JO Trust, giving rise to payment in full on these invoices, and properly apportioned the balance of those sums to ABD Ltd.

[11] ZZA Ltd is entitled to rely on the fact that payment on these invoices have been made without dispute and can be safe in the knowledge that they can utilise these sums for their purposes without demand by ML on these sums.

[12] Therefore, in respect of ML’s claim for a refund of \$500.00, in paying sums of money without apportioning those sums to specific invoices, and in ZZA Ltd properly apportioning those sums as invoiced to the respective invoices, I find there has been accord and satisfaction reached between the parties in respect of those invoices for PH Ltd and the JO Trust, and for the sum apportioned to ABD Ltd.

Conclusion

[13] There is dispute on the balance of ABD Ltd’s account of \$175.00, thus there is no accord and satisfaction reached on that sum. In light of my finding above that the price given

is deemed GST inclusive, as this sum is a part of the unstated GST component, I find ABD Ltd not liable to pay this sum.

[14] In light of my finding above regarding accord and satisfaction, I find ML is unable to recover the sum claimed of \$500.00 which was properly apportioned to ABD Ltd's invoice.